

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR MANATEE COUNTY, FLORIDA

DUEALL CONSTRUCTION, INC.,
a Florida corporation,

CASE No.:

13A03184

Plaintiffs,

v.

ANDREW A. SMITH, an individual,
and ARMANDO OYOLA DELGADO,
an individual,

Defendants.

CLERK OF CIRCUIT COURT
MANATEE CO, FLORIDA

2013 MAY 16 AM 11:11

FILED FOR RECORD
C. B. SHORE

COMPLAINT

Plaintiff, DUEALL CONSTRUCTION, INC. ("DUEALL"), by and through its undersigned counsel, sues Defendants, ANDREW A. SMITH ("SMITH") and ARMANDO OYOLA DELGADO ("DELGADO"), and alleges:

COMMON ALLEGATIONS

1. This is an action for damages which exceed \$15,000.00, excluding interest, costs and attorney fees.
2. DUEALL is a Florida corporation, with its principal place of business located in Hillsborough County, Florida.
3. SMITH is an individual, residing in Manatee County, Florida.
4. DELGADO is an individual, residing in Manatee County, Florida
5. Venue is proper in Manatee County, Florida, as that is where Defendants reside and that is where the cause of action accrued.

6. DUEALL is a highly regarded general contracting company that has operated in West Florida for nearly four years. DUEALL's reputation has been an important factor in its growth and success.
7. The corporate officers and co-owners of DUEALL are Sal Ventimiglia ("Ventimiglia") and Anthony Robbins ("Robbins"). As DUEALL's corporate representatives, their character and reputation directly reflect on DUEALL.
8. KB Home Tampa, LLC ("KB Homes") was the developer and contractor of the Willowbrook Condominium (Willowbrook) located in Bradenton, Florida.
9. In or around November 2012, DUEALL contracted with KB Homes to repair certain construction defects and resulting water damage to the Willowbrook Condominium ("Project").
10. SMITH is a unit owner in Willowbrook. SMITH is also the owner and administrator of the website, www.thekbhome.com, whose stated purpose is to serve as a "tool to help existing KB Home homeowners battle KB Homes with success."
11. DELGADO is a current tenant in Willowbrook.
12. Despite DUEALL's satisfactory progress on the difficult and emotionally charged Willowbrook Project, SMITH and DELGADO have initiated a campaign to smear and defame DUEALL and its owners.
13. DUEALL has performed all conditions precedent to bringing this action, or they have otherwise occurred or been waived.

COUNT 1 AS TO SMITH
(Defamation by Implication)

14. DUEALL realleges and incorporates all of the Common Allegations as though they were fully set forth in this Count.

15. On or about April 17, 2013, SMITH, on his website, www.thekbhome.com, alleged that DUEALL has misrepresented its ownership, since only Ventimiglia was known to SMITH as an owner of DUEALL. SMITH further stated that SMITH believes the reason DUEALL has been hiding Robbins' ownership is because of Robbins' prior criminal conviction. SMITH is trying to discredit DUEALL and its owners by portraying them as dishonest and lacking in moral character as a result of Anthony Robbins' prior criminal conviction.
16. SMITH's website also uses Robbins' photographic image and lists his prior criminal convictions in an article entitled "Did Willowbrook Know? Who is Dueall Construction?," and features the line "Don't you think that you have the right to know who will be working on your home?" directly below the photo of Robbins.
17. SMITH's website is published on the internet, and is available to any third party who has access to the internet. SMITH published these false statements to the broad internet audience.
18. The content SMITH posted on his website falsely implies that DUEALL and Robbins lack proper moral character and are not to be trusted. SMITH's assertions are without any merit or factual basis.
19. SMITH has published the defamatory statements without reasonable care as to the falsity of the statements. SMITH's false statements and fear mongering were undertaken to maliciously and intentionally injure DUEALL.
20. DUEALL has suffered damages as a result of SMITH's publication of false and scandalous statements.

21. DUEALL is entitled to the damages it has incurred as a result of SMITH's publication of false and defamatory statements.

WHEREFORE, Plaintiff, DUEALL CONSTRUCTION, INC., demands judgment against Defendant, ANDREW A. SMITH, for damages, pre and post judgment interest and costs.

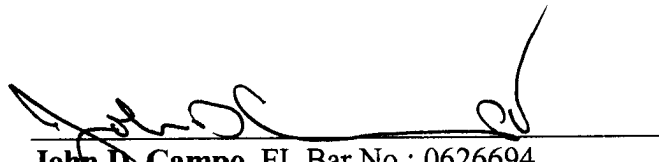
COUNT 2 AS TO DELGADO
(Defamation by Implication)

22. DUEALL realleges and incorporates all of the Common Allegations as though they were fully set forth in this Count.
23. On or about April 26, 2013, DELGADO created a banner and displayed it on the tailgate of his pickup truck in the driveway of his Willowbrook residence.
24. DELGADO's banner contains Robbins' photographic image and the details of Robbins' felony probation for a prior criminal conviction. The banner also contains the text "Never Knew Never Told Do you want him in your house? HELL NO!" as well as "MEET DUEALL CONSTRUCTION OWNER" next to Robbins' image. The "CON" in CONSTRUCTION is emphasized on the banner either to insinuate that Robbins' is a con man or to emphasize a negative connection between Robbins' prior criminal conviction and DUEALL's reputation.
25. DELGADO created and displayed the banner in order to discredit DUEALL. The sole purpose of the banner is to cast DUEALL in a derogatory and improper manner in order to harm its reputation and negatively impact its business operation on the Willowbrook Project, as well as in the Tampa Bay area.
26. DELGADO has published the statement to third parties by prominently displaying the banner on the tailgate of his pickup truck, where it can be seen by anyone at the Willowbrook Project or in the Tampa Bay area.

27. DELGADO published false and misleading statements about DUEALL, when he called DUEALL and Robbins “cons” and alleged that DUEALL is not safe or reputable enough to be allowed into a person’s residence.
28. DELGADO has published the false and defamatory statements without reasonable care as to the falsity of the statements. DELGADO’s false statements and fear mongering were undertaken to maliciously and intentionally injure DUEALL.
29. DELGADO intentionally and maliciously continued to display the banner on his pickup truck even after receiving a cease and desist letter dated April 26, 2013. (A copy of the letter is attached hereto as **Exhibit “A”**.)
30. DUEALL has suffered damages as a result of DELGADO’s publication of false and scandalous statements.
31. DUEALL is entitled to the damages it has incurred as a result of DELGADO’s publication of false and defamatory statements.

WHEREFORE, Plaintiff, DUEALL CONSTRUCTION, INC., demands judgment against Defendant, ARMANDO O. DELGADO, for damages, pre and post judgment interest and costs.

Respectfully submitted,



John D. Campo, FL Bar No.: 0626694
NIESEN, PRICE, WORTHY, CAMPO, P.A.
5216 S. W. 91 Dr., Gainesville, FL 32608
(P) 352/373-9031; (F) 352/373-9099
john@npw-law.com
ATTORNEY FOR PLAINTIFFS
Legal Assistant: janet@npw-law.com